

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

STEVEN KINFORD,

Plaintiff,

v.

SOCIAL SECURITY
ADMINISTRATION,

Defendant.

3:12-cv-00096-LRH-VPC

**REPORT AND RECOMMENDATION
OF U.S. MAGISTRATE JUDGE**

September 18, 2013

This Report and Recommendation is made to the Honorable Larry H. Hicks, United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and LR IB 1-4. On March 28, 2013, petitioner filed a new petition in this closed case (#27).¹ Defendant has filed a motion to dismiss (#28), petitioner opposed (#30) and defendant replied (#31). The court has thoroughly reviewed the record, and recommends that the petition be stricken and defendant's motion to dismiss (#28) be denied as moot.

On February 16, 2012, *pro se* petitioner Steven Kinford ("petitioner") initiated this action, which he styled as a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241 (*see* #s 1, 6).² At that time, petitioner sought injunctive relief apparently directing the Social Security Administration ("SSA") to pay certain benefits to his wife and daughter (#6). A September 17, 2012 minute order indicates that the parties reached an agreement that petitioner would dismiss the action

¹ Refers to the court's docket numbers.

² The court notes that it appears that petitioner has incorrectly styled this matter as a habeas petition when he should have filed a complaint pursuant to 42 U.S.C. § 405(g).

1 and proceed with the SSA appeals process (#22).³ On October 9, 2012, the District Court signed and
2 filed the parties' stipulation to dismiss the case without prejudice, and the case was closed (#26).

3 On March 28, 2013, petitioner filed a new petition in this closed case (#27). He apparently
4 now seeks injunctive relief against the SSA directing it to stop paying child insurance benefits to
5 certain of his children because his parental rights have allegedly been terminated. *Id.* However,
6 petitioner cannot file anything in this closed case. Moreover, the court notes that on the face of the
7 petition he states that he submitted a Case Appeal to the SSA on December 20, 2012 and that he had
8 not yet received a response as of the date he filed this petition. *Id.* at 2. Petitioner must first fully
9 exhaust all of his administrative remedies with the SSA. 42 U.S.C. § 405(g). At that point, if
10 petitioner still wishes to seek relief in this court, he must file a new action, with a new case number,
11 along with the full filing fee or a completed application to proceed *in forma pauperis*.
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13 Accordingly, as petitioner has improperly filed a new petition in this closed case, the court
14 recommends that the new petition (#27) be stricken. The court further recommends that defendant's
15 motion to dismiss (#28) be denied as moot. Finally, the court recommends that petitioner be directed
16 not to file any further documents in this closed case.
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19 **IT IS THEREFORE RECOMMENDED** that the petition (#27) be **STRICKEN**.

20 **IT IS FURTHER RECOMMENDED** that defendant's motion to dismiss (#28) be
21 **DENIED** as moot.
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³ According to defendant, at that hearing petitioner conceded that the subject of his original petition had been resolved and that he wished to bring a new matter before the agency (#28, p. 2).

IT IS FURTHER RECOMMENDED that petitioner be directed that he shall file nothing

The parties should be aware of the following:

1. Pursuant to 28 U.S.C. § 636(b)(1)(c) and Rule IB 3-2 of the Local Rules of Practice, the parties may file specific written objections to this Report and Recommendation within fourteen days of receipt. These objections should be titled “Objections to Magistrate Judge’s Report and Recommendation” and should be accompanied by points and authorities for consideration by the District Court.
2. This Report and Recommendation is not an appealable order and any notice of appeal pursuant to Fed.R.App.P. 4(a)(1) should not be filed until entry of the District Court’s judgment.

DATED: September 18, 2013.

Valerie P. Boone

UNITED STATES MAGISTRATE JUDGE